

Message Text

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INFO OCT-01 IO-13 ISO-00 OIC-02 STRE-00 AF-10 ARA-10

EA-10 EUR-12 NEA-10 AGRE-00 CEA-01 CIAE-00

COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05

L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05

SS-15 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02 OMB-01

DOE-11 /159 W

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TO SECSTATE WASHDC PRIORITY 7160

INFO AMEMBASSY BERN

AMEMBASSY BRASILIA

AMEMBASSY BRUSSELS

AMEMBASSY CANBERRA

AMEMBASSY HELSINKI

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USMTN USEEC

STR FOR ACTION

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E.O. 11652: N/A

TAGS: MTN, ETRD P

SUBJECT: MTN: MEETING OF STANDARDS SUBGROUP

- 6-10 MARCH 1978

1. SUMMARY: DURING INFORMAL SESSIONS WITH KEY PARTI-

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CIPANTS, AGREEMENT WAS REACHED ON AN OUTLINE, SUBSTANTIAL-

LY BASED UPON A U.S. DRAFT, OF A DISPUTE SETTLEMENT

MECHANISM. FORMAL SUBGROUP ADOPTED OUTLINE AS BASIS

FOR FURTHER DEVELOPMENT OF DISPUTE SETTLEMENT PROVISIONS.

THIS MARKS FIRST SUCH AGREEMENT IN ANY OF THE NTM

CODES. DISCUSSION OF SPECIAL AND DIFFERENTIAL

TREATMENT WAS LOW KEYED, WITH SEVERAL DC'S SUPPORTING

THE CONCEPTS CONTAINED IN NORDIC PROPOSALS. LDC'S EXPRESSED INTEREST IN PURSUING INFORMAL DISCUSSIONS ON NORDIC IDEAS, BUT MAINTAINED THEIR OWN S&D PROPOSALS. EC PROPOSAL ON LEVELS OF OBLIGATION WAS SUBJECT TO SHORT DISCUSSION, WITH MOST DELS RESERVING POSITIONS UNTIL EC PRODUCES A DRAFT TEXT TO SHOW THE IMPLICATIONS OF ITS IDEA FOR THE DRAFT CODE. END SUMMARY.

2. DISPUTE SETTLEMENT: STANDARDS SUBGROUP AGREED ON AN OUTLINE REGARDING INSTITUTIONS, CONSULTATIONS, DISPUTE SETTLEMENT AND SURVEILLANCE IN STANDARDS CODE, WHICH WAS DEVELOPED IN INFORMAL PLURILATERAL SESSIONS, AS WORKING DOCUMENT DESIGNED TO FACILITATE DEVELOPMENT OF OPERATIVE TEXT. THIS REPRESENTS FIRST MAJOR STEP TOWARDS AGREEMENT ON DISPUTE SETTLEMENT IN STANDARDS CODE, AND IN NTM CODES IN GENERAL. DISCUSSION IN INFORMAL PLURILATERAL SESSIONS MARCH 6 AND 7, WAS SERIOUS AND SUBSTANTIVE, DEMONSTRATING PARTICIPANTS CONCERN FOR ACHIEVING PROGRESS ON STANDARDS CODE. EC (ABBOTT), CANADA (DENIS), NORDICS (STALBERG) AND JAPAN (TAMORI) HELPFUL IN MOVING DISCUSSION ON DISPUTE SETTLEMENT FORWARD AND, ALTHOUGH AREAS OF DISAGREEMENT EXIST, EFFORTS WERE CONCENTRATED ON SETTING DOWN POINTS ON WHICH THERE IS A CONSENSUS.

3. AGREED OUTLINE FOR DISPUTE SETTLEMENT PROCEDURES
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SUBSTANTIALLY REFLECTS A DRAFT SUBMITTED BY THE U.S. BASED ON TPSC DOCUMENTS 78-15 AND 78-22, AND COVERS INSTITUTIONS, ENFORCEMENT PROCEDURES AND SURVEILLANCE MECHANISMS IN STANDARDS CODE. BEFORE EC WOULD ENGAGE IN THE DRAFTING EXERCISE IT SOUGHT AN UNDERSTANDING THAT PARTICIPANTS WERE WORKING TOWARD AS SELF-CONTAINED AND AS BINDING A CODE AS POSSIBLE, WITH DISPUTE SETTLEMENT PROCEDURES BASED ON GATT ARTICLES XXII AND XXIII, ADAPTED AS NECESSARY TO THE STANDARDS CODE. DELS EXPRESSED NO DIFFICULTY ACCEPTING THESE PRINCIPLES AND THEY WERE INCORPORATED INTO THE OUTLINE. TWO INSTITUTIONS, I.E. COMMITTEE OF CODE ADHERENTS AND PANELS OF EXPERTS ARE INCLUDED IN THE OUTLINE. SWISS SUGGESTION FOR A THIRD INSTITUTION, A PERMANENT GROUP OF EXPERTS, (A LA TSB) RECEIVED NO SUPPORT FROM OTHER DELS. ENFORCEMENT PROCEDURES ARE TO BE BASED ON SEEKING RESOLUTION OF DISPUTES THROUGH CONSULTATIONS. WHERE NO MUTUALLY SATISFACTORY SOLUTION IS REACHED ON A BILATERAL BASIS, THE MATTER CAN BE REFERRED TO A MULTILATERAL BODY FOR REVIEW WITH RECOURSE TO A PANEL. THE ONLY MAJOR DISAGREEMENT REFLECTED IN THE OUTLINE IS WHETHER PANELS "SHALL" OR "MAY" BE

ESTABLISHED UPON REQUEST. BOTH WORDS APPEAR IN BRACKETS.
PANELS ARE TO REPORT TO COMMITTEE WITHIN A REASONABLE
TIME PERIOD AND THE COMMITTEE IS TO SEEK RESOLUTION OF
DISPUTES IN A WAY CONSISTENT WITH THE HIGHEST LEVEL
OF TRADE LIBERALIZATION. A SUBSTANTIVE DISCUSSION
ON THE RELATIONSHIP OF THE CODE WITH THE GATT WAS
GENERATED WHEN THE QUESTION OF SANCTIONS WAS
ADDRESSED. THE NORDICS AND CANADIANS ASSERTED
THAT THE ONLY EFFECTIVE SANCTIONS MIGHT BE WITHDRAWAL
OF TARIFF CONCESSIONS OR OTHER MEASURES WHICH ARE WITHIN
THE COMPETENCE OF THE GATT. EC ASSERTED THAT SANCTIONS
WITHIN THE CODE ARE POSSIBLE (E.G. WITHHOLDING OF NATIONAL
TREATMENT IN CERTIFICATION SYSTEMS) AND VENTURED THAT
EVEN TARIFF WITHDRAWALS MIGHT BE CONSIDERED, AS A PRAC-
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INFO AMEMBASSY BERN
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TICAL MATTER, IF APPLIED ONLY WITH RESPECT TO VIOLATION OF CODE'S PROVISIONS. DELS CONCLUDED THAT PROVISION FOR SANCTIONS WOULD HAVE TO AWAIT OUTCOME OF DEBATE ON GATT AND CODE RELATIONSHIP. ON GATT/CODE ISSUE, A POSITIVE STEP FORWARD WAS TAKEN WHEN AGREEMENT WAS REACHED THAT IN DISPUTES CONCERNING CODE'S OBLIGATIONS, THE DISPUTE SETTLEMENT PROCEDURES UNDER THE CODE WOULD BE EXHAUSTED. THUS, IN THE FIRST INSTANCE, SIGNATORIES WOULD NOT BE ABLE TO FORUM SHOP BETWEEN GATT AND CODE FOR RESOLVING PROBLEMS.

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4. EC PROPOSAL ON LEVELS OF OBLIGATION: IN INTRODUCING EC PROPOSAL, ABBOTT REITERATED CONCERN THAT FEDERAL STATES WILL CARRY LIGHTER LOAD UNDER CODE THAN UNITARY STATES, SINCE UNITARY STATES WILL HAVE TO ENSURE COMPLIANCE BY ALL STANDARDS-SETTING BODIES WITHIN THEIR TERRITORIES, WHILE FEDERAL STATES NEED ONLY USE "BEST ENDEAVORS" TO OBTAIN COMPLIANCE BY STATE AND LOCAL BODIES. EC PROPOSES TO REDRESS THIS ALLEGED IMBALANCE BY DEFINING "BEST ENDEAVORS" IN TERMS OF ACHIEVING THE SAME RESULTS THAT WOULD HAVE BEEN OBTAINED HAD THE CENTRAL GOVERNMENT ADOPTED A FIRST LEVEL OF OBLIGATION. FAILURE TO ACHIEVE SUCH RESULTS WOULD ENTAIL CENTRAL GOVERNMENT BEING "RESPONSIBLE" (UNDEFINED) TO OTHER CODE ADHERENTS UNDER ANY DISPUTE SETTLEMENT PROCEEDINGS.

5. AUSTRALIAN REP (SPENCER) RAISED OBJECTION TO EC PROPOSAL, INDICATING GREAT RELUCTANCE OF GOA TO PUSH FOR LEGISLATION WHICH WOULD MAKE FEDERAL AUTHORITY PREEMINENT IN STANDARDS AREA AND EQUAL RELUCTANCE TO ACCEPT THAT FEDERAL GOVERNMENT WOULD HAVE TO COMPENSATE FOR STATE ACTIONS. U.S. REP (NEWKIRK) STATED THAT ANALYSIS OF EC PROPOSAL WAS DIFFICULT WITHOUT GREATER KNOWLEDGE OF FINAL DISPUTE SETTLEMENT MECHANISM AND WITHOUT MORE INFORMATION FROM EC CONCERNING DRAFTING CHANGES ENVISAGED IN PROPOSAL. HE QUERIED EC AS TO WHETHER REGIONAL CERTIFICATION BODIES SHOULD NOT ALSO ASSUME THE SORT OF OBLIGATIONS BEING PROPOSED BY EC FOR ADHERENTS. NORDICS, JAPANESE, SWISS AND CANADA ALSO PRESSED FOR PRECISE DRAFT TEXT OF EC PROPOSAL. EC RETORTED THAT KEY ISSUE IS WHETHER PARTICIPANTS WITH FEDERAL GOVERNMENT SYSTEMS ARE WILLING TO ASSUME SUCH RESPONSIBILITY AND NOT DRAFT LANGUAGE. NORDICS RESPONDED THAT THEY ARE PREPARED TO ACCEPT SUCH AN

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OBLIGATION, EVEN WITH RESPECT TO PRIVATE STANDARDS ORGANIZATIONS. ISRAELI DEL (HARAN) ALSO FAVORED EC PROPOSAL, PARTICULARLY ON ITS IMPLICATIONS FOR PRIVATE ORGANIZATIONS. (IN PRIVATE CONVERSATION CANADA DEL EXPRESSED SKEPTICISM ON WHETHER CANADIAN GOVERNMENT WOULD WISH TO ASSUME SUCH RESPONSIBILITY FOR PRIVATE BODIES.)

6. SPECIAL AND DIFFERENTIAL TREATMENT: INITIAL DISCUSSION ON SPECIAL AND DIFFERENTIAL TREATMENT (S&D) FOCUSED ON NORDIC PROPOSAL. NORDIC AND U.S. ATTEMPTED TO GAIN AGREEMENT TO FOCUS S&D DEBATE ON ONE TEXT RATHER THAN MULTITUDE OF OUTSTANDING PROPOSALS ON THIS TOPIC. AS ANTICIPATED, LDC'S LED BY MEXICO (FAVORING SPRINKLING OF S&D PROVISIONS THROUGHOUT TEXT) AND ASEAN (FONG), RESISTED THE MOVE, DECLARING THAT ALL PROPOSALS SHOULD BE REGARDED ON EQUAL TERMS. LDC STATEMENTS, ESPECIALLY THOSE BY BRAZIL WHICH CHARACTERIZED PROPOSAL AS A "STEP FORWARD", WERE MODERATE, EXPRESSING INTEREST IN PURSUING NORDIC IDEAS. EC AND CANADA GAVE SUPPORT TO NORDIC IDEA OF COMMITTEE GRANTING SPECIFIC AND TIME LIMITED DEROGATIONS TO CODES OBLIGATIONS FOR LDC'S ON CASE-BY-CASE BASIS. SWISS DEL INTRODUCED A NEW PROPOSAL FOR S&D (WHICH THEY DISTRIBUTED TO U.S. DEL AND OTHERS). PROPOSAL WOULD OPEN CERTIFICATION SYSTEM TESTING FACILITIES FOR THE USE OF LDC'S WITHOUT REQUIRING THEIR MEMBERSHIP IN THE SYSTEM. AN LDC PRODUCT CERTIFIED IN SUCH A FACILITY WOULD HAVE ITS CERTIFICATION ACCEPTED BY MEMBERS OF THE SYSTEM. SWISS PROPOSAL WOULD ALSO ESTABLISH LISTS OF LDC EXPERTS AND STANDARDS EXPERTS IN EACH DC WHO WOULD BE AVAILABLE TO ASSIST LDC'S IN PREPARING THEIR CASES FOR DISPUTE SETTLEMENT. CHAIRMAN OF SUBGROUP (WILLIAMS) URGED DELEGATIONS TO HOLD INFORMAL SESSIONS ON THE SUBJECT OF S&D IN THE STANDARDS AREA, INCLUDING ON NORDIC AND SWISS PROPOSALS, WITH THE

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INFO AMEMBASSY BERN
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OBJECT OF NARROWING THE FOCUS OF DISCUSSION IN THE
FUTURE.

7. OTHER PROPOSALS: (A) NORDIC PROPOSALS ON OTHER
TOPICS WERE SUBJECT TO BRIEF DISCUSSION. ON THE SCOPE
OF THE CODE, THE SUBGROUP AGREED TO INSERT IN POINTS
FOR THE RECORD THE NORDIC LANGUAGE REGARDING SITUATIONS
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WHERE CODE OBLIGATIONS WERE BEING CIRCUMVENTED BY DRAFT
OF TECHNICAL SPECIFICATIONS IN TERMS OF PROCESS AND PRO-
DUCTION METHODS. U.S. DEL STATED THAT ITS ACQUIESENCE
TO THIS AGREEMENT WAS PREMISED ON THE UNDERSTANDING
THAT THE SUBGROUP WILL REVERT TO THE FORMULATION OF

POSITIVE OBLIGATION ON THIS QUESTION IN CODE'S TEXT.
THIS STATEMENT WILL APPEAR IN NEXT "POINTS BEFORE THE
GROUP" DOCUMENT.

(B) SUBGROUP ALSO AGREED TO NORDIC PROPOSAL ON RETRO-
ACTIVITY AND PUT IT INTO THE DRAFT CODE. THIS PROVISION
ALLOWS FOR THE APPLICATION OF THE CODE'S DISPUTE SETTLE-
MENT MECHANISM TO STANDARDS IN FORCE AT THE TIME THE CODE
IS ADOPTED.

(C) THE NORDIC PROPOSAL ON NOTIFICATION OF MEASURES TAKEN
TO CONFORM WITH CODE IS TO BE INCORPORATED WITH OTHER
PROPOSALS REGARDING INSTITUTIONS.

(D) FOUR OTHER PROPOSALS WERE DISCUSSED AND REMAIN ON
THE TABLE WITHOUT BEING INCORPORATED IN THE DRAFT CODE.
THEY ARE (1) NORDIC PROPOSAL ON REVIEW OF THE IMPLEMENTA-
TION PROVISIONS OF SECTION 19; (2) HUNGARIAN PROPOSAL
(WITH POSSIBLE MODIFICATIONS) ON CERTIFICATION ACTIVITIES
OF REGIONAL BODIES; (3) COVERAGE OF PROCESSES AND PRO-
DUCTION METHODS, AS DISTINCT FROM PRODUCT CHARACTERISTICS;
AND (4) SWISS/EGYPTIAN PROPOSAL ON EMERGENCY ESCAPE
CLAUSE (SECTION 2(F)).

8. REVIEW OF DRAFT CODE BY GROUP AGRICULTURE: THE
U.S. REP QUERIED INFORMAL PLURILATERAL PARTICIPANTS AS
TO WHAT FUTURE STEPS SHOULD BE TAKEN REGARDING APPLICA-
BILITY OF THE CODE TO AGRICULTURAL PRODUCTS GIVEN SHORT
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TIME AVAILABLE TO WRAP UP CODE. DELS WERE NOT IN A
POSITION TO COMMENT ON TOPIC AT THIS TIME, BUT AGREED TO
BE IN CONTACT INFORMALLY.

9. FUTURE WORK: INFORMAL PLURILATERAL WORKING SESSIONS
ARE PLANNED FOR ENTIRE WEEK OF APRIL 17, WITH A FORMAL
SUBGROUP MEETING TO BE SET LATE IN WEEK IF JUSTIFIED BY
PROGRESS IN INFORMALS. FOLLOWING AREAS WILL BE COVERED:
DISPUTE SETTLEMENT, S&D, AND EC PROPOSAL ON LEVELS OF
OBLIGATIONS. IN ADDITION, NORDICS EXPECTED TO RAISE
ISSUE OF CERTIFICATION PROVISIONS IN CODE (ESPECIALLY
CODE SECTIONS 9 AND 13).

10. DRAFTED BY STANDARDS DELEGATION. MCDONALD

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, AGREEMENT DRAFT, MEETING REPORTS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA03922
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780111-1162
Format: TEL
From: GENEVA USMTN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780377/aaaacmte.tel
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Litigation History:
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Office: ACTION STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
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Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3355397
Secure: OPEN
Status: NATIVE
Subject: MTN: MEETING OF STANDARDS SUBGROUP - 6-10 MARCH 1978
TAGS: ETRD, US, MTN
To: STATE USEEC
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/265474c8-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
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